

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ROOSTER OIL & GAS L.L.C., <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION H-13-1983
	§	
BIRNHAM ENERGY INVESTMENT	§	
COMPANY, L.P., <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	

**ORDER ADOPTING MAGISTRATE JUDGE’S  
MEMORANDUM & RECOMMENDATION AND ORDER OF REMAND**

Pending before the court is the Magistrate Judge’s Memorandum & Recommendation (Dkt. 30) recommending that the counter-plaintiffs’ motion to remand (Dkt. 6) be granted with respect to remand and denied with respect to attorneys’ fees and costs. Having reviewed the Memorandum & Recommendation, the pleadings, counter-defendant Chet Morrison’s (“Morrison”) objections (Dkt. 34), and the applicable law, the court **OVERRULES** Morrison’s objections and **ADOPTS** the Magistrate Judge’s Memorandum & Recommendation.


The Magistrate Judge recommended that this court remand the case on grounds that Morrison, a counter-defendant, did not have standing to remove the action under 28 U.S.C. § 1441(a). Dkt. 30 at 9–10. That statute restricts the removability of a case to “the defendant or the defendants” and has been held not to extend to a plaintiff/counter-defendant. 28 U.S.C. § 1441(a); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941) (holding that a plaintiff/counter-defendant may not remove a case under § 1441(a)). To date, the Fifth Circuit has not decided the related question of whether a counter-defendant, who was not an original plaintiff to the action, may remove the case under § 1441(a). Nonetheless, the overwhelming majority of courts have adopted

*Shamrock's* admonition to strictly construe the removal statutes and have not extended a right of removal under § 1441(a) to counter-defendants or third-party defendants. *See, e.g., Huntsman Corp. v. Int'l Risk Ins. Co.*, 2008 WL 4453170, at \*3 (S.D. Tex. Sept. 26, 2008) (collecting cases).

Morrison asks the court to adopt the minority view based on a handful of district court opinions, some within this circuit and one from Illinois, that have suggested or explicitly held that third-party defendants may remove a case under § 1441(a). Dkt. 34 at 7–13. This court, however, declines the invitation. Absent clear guidance from Congress or a higher court affirming that counter-defendants may remove cases under § 1441(a), this court will not expand the statutory language beyond its logical limitations. Morrison's objections are **OVERRULED**.

The Magistrate Judge's Memorandum and Recommendation is therefore **ADOPTED**, and pursuant to 28 U.S.C. § 1447(c), this case is **REMANDED** to the 165th Judicial District Court of Harris County, Texas. All parties shall bear their own costs and attorneys' fees related to removal.

Signed at Houston, Texas on November 12, 2013.

  
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Gray H. Miller  
United States District Judge